# PUBLIC HEALTH

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Emergency

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SB 10-189 (Enacted) HB 10-1149 (Enacted)

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Exchange

During the 2010 session, the General Assembly considered a variety of bills concerning public health. The legislature considered bills relating to solid waste fees and waste tires, air quality, and access to health care for undeserved and rural areas of the state. In addition, as a result of the budget shortfall, the General Assembly approved legislation transferring moneys from the tobacco tax and tobacco settlement that currently fund health care programs to the state's General Fund. Finally, the General Assembly considered legislation related to the state's medical marijuana program.

#### Regulation of Medical Marijuana

In 2000, Colorado voters approved Amendment 20 which legalized the use of marijuana for certain medical conditions. The Department of Public Health and Environment administers the medical marijuana program.

Since voters approved Amendment 20 in 2000, the number of people in the state who are legally allowed to purchase marijuana has steadily increased. According to Department of Public Health and Environment, in 2007, 1,955 people had medical marijuana registration cards; in 2008, there were 4,720 on the department's medical marijuana registry. Currently, there are about 13,000 people on the registry. According to the department, on an average day, there are about 400 requests submitted for medical marijuana cards, and some days applications are as high as 600. In addition, the relatively recent growth in the establishment of medical marijuana storefronts, called dispensaries, has increased public interest in the medical marijuana program.

During the 2010 legislative session, the General Assembly considered legislation related to the regulation of the medical marijuana program, doctors who certify that patients may participate in the program, and dispensaries.

**Senate Bill 10-109** regulates the role of physicians in certifying that an individual may benefit from medical marijuana as follows:

- a physician and a patient must have a "bona fide" relationship before a physician may certify that a patient would benefit from medical marijuana;
- the physician must be available or offer to provide follow-up care and treatment to the patient after he or she begins using medical marijuana;
- the physician must maintain a record-keeping system for all patients certified by the registry;
- the physician may not offer a discount to a patient who uses a particular dispensary or caregiver or diagnose a patient for a debilitating medical condition at a place where medical marijuana is sold or distributed;
- the physician may not accept payment from any provider of medical marijuana or hold an economic interest in any marijuana dispensary; and
- the physician must hold a doctor of medicine or doctor of osteopathic medicine from an accredited medical school, have a valid, unrestricted license to practice medicine, and a valid, unrestricted U.S. Drug Enforcement Administration controlled substances registration.

The bill requires the Department of Public Health and Environment to:

- develop a form to meet the requirement of what constitutes "written documentation" that a patient may be certified for the use of medical marijuana;
- issue registry identification cards to patients and primary caregivers;
- ensure that an individual receives a registry card only if he or she has a bona fide relationship with a physician;
- develop procedures that allow patients to have the registry fee waived if they are indigent; and
- develop procedures for enforcement, including the process for referring a physician to the Board of Medical Examiners for investigation.

An individual convicted of a criminal offense must renew his or her card immediately and have a recommendation from a physician who has a bona fide relationship with the individual. The costs of

implementing the new regulations and maintaining the program are to be paid from the Medical Marijuana Program Cash Fund, which is funded with the fees individuals pay to receive a registry card.

The General Assembly adopted an additional bill related to the medical marijuana program. **House Bill 10-1284** creates a state and local licensing program for medical marijuana dispensaries, medical marijuana cultivators, and producers of edible marijuana products. It also regulates the role of caregivers for individuals who participate in the medical marijuana program.

*Medical marijuana licensing authority.* The bill creates the state medical marijuana licensing authority within the enforcement division of the Department of Revenue as well as local licensing authorities throughout the state. In order to operate a dispensary, the owner must obtain a license from the state Department of Revenue as well as a local licensing authority. In addition, if an operator plans to grow marijuana off-site, he or she must obtain a separate premises cultivation license. If the operator plans to produce edible marijuana products, he or she must obtain an infused product manufacturer's license.

Prior to July 1, 2011, a local government can adopt a resolution or ordinance licensing, regulating, or prohibiting the cultivation and sale of medical marijuana within the government's jurisdiction. The local licensing authority may restrict the number and location of dispensaries and premises cultivation licenses issued in the locality; however, if a locality does not adopt ordinances concerning dispensaries, the state law will apply. The applicant must provide required information concerning the specifications for the building in which a dispensary will be housed and information on employees. Owners, officers, and employees of the dispensary must undergo a criminal background check. The local licensing authority may hold a public hearing prior to approving any license. After receiving a local license, the owner of a dispensary or a premises cultivator must apply for a state license.

The bill restricts where dispensaries may be located, sets the hours during which dispensaries may operate, and limits the amount of marijuana that a dispensary may have at any given time. The bill requires that dispensaries grow at least 70 percent of the marijuana sold. In order to obtain a state license, the owner of the dispensary must pay a \$5,000 bond. The state licensing authority is authorized to adopt rules, forms, and applications. Rules may include the following:

- enforcement of the medical marijuana code;
- instructions for local licensing authorities and law enforcement officers;
- inspections and investigations of medical marijuana facilities;
- penalties associated with violations;
- development of identification cards for employees; and
- security requirements for medical marijuana centers.

The bill specifies that certain individuals are prohibited from operating a medical marijuana dispensary, including physicians, individuals under 21 years of age, and members of law enforcement. Licenses are issued for up to two years. Owners are required to keep records on all transactions for three years and provide them to the state licensing authority upon request for inspection. Dispensaries, cultivators, manufacturers, and employees are required to pay a fee which is set to cover the costs for operating the state and local licensing authorities.

Both the local and the state licensing authorities have the authority to suspend and revoke licenses and issue fines for violations of the medical marijuana code. The bill also specifies violations of the medical marijuana code, such as smoking medical marijuana at a dispensary or possessing more than six plants and two ounces of marijuana for each patient who is registered with the dispensary. Violations of the code are a class 2 misdemeanor.

The bill specifies that the first \$2 million collected in sales and use taxes from medical marijuana is to be appropriated to the Department of Human Services and the Department of Health Care Policy and Financing for substance abuse programs.

**Regulation of caregivers.** Amendment 20 allows individuals to serve as caregivers to individuals who are authorized to use medical marijuana. House Bill 10-1284 amends the statute concerning the medical marijuana program to regulate the role of caregivers as follows:

- a caregiver is required to register with the Department of Public Health and Environment for each patient for whom he or she is a caregiver with a limit of five patients at any time, except in exceptional circumstances;
- a patient may only have one caregiver at any time;
- the department must create a confidential registry of caregivers and, with the caregiver's permission, provide the caregiver's information to a patient or physician seeking a caregiver;
- an individual who is not currently a caregiver can submit his or her information to the registry to be considered to be a caregiver for a patient who does not have one; and
- patients and caregivers are required to have their registry cards in their possession at any time that they possess medical marijuana.

The General Assembly considered a concurrent resolution related to medical marijuana which did not pass. **Senate Concurrent Resolution 10-005** would have clarified that caregivers of patients who are participating in the medical marijuana program must provide assistance to the patient that is greater than providing medical marijuana. The resolution would have outlawed the operation of medical marijuana dispensaries.

#### **Health Care for Underserved Areas**

The General Assembly considered two bills related to increasing access to health care services for rural and underserved areas of the state. **House Bill 10-1138** changes the name of the State Health Care Professional Loan Repayment Program to the Colorado Health Service Corps. The program provides loan repayment assistance to primary care doctors who serve in federally designated health professional shortage areas. In addition, the bill makes the following changes to the loan repayment program:

- removes the \$35,000 annual limit on loan repayment for an eligible health care professional;
- allows the program to make regular payments on a person's loan or provide an advance lump sum payment;

- exempts the selection of health care professionals for the program from the competitive bidding requirements of state procurement law; and
- changes the information that the program must report to the General Assembly in its annual report.

**House Bill 10-1179**, which was postponed indefinitely, would have enacted a number of changes to promote access to primary health care services in underserved areas. Specifically, the bill would have:

- allowed insurers to offer a 50 percent discount on medical malpractice insurance to primary care doctors serving in federally designated health professional shortage areas;
- removed the \$35,000 per year cap on loan repayment awards under the State Health Care Professional Loan Repayment Program; and
- required the Department of Health Care Policy and Financing to submit a report to the General Assembly by December 31, 2011, regarding ways to increase reimbursement rates statewide for primary care providers under Medicaid and remove any differences in reimbursement rates based on where a provider is working or located.

### **Solid Waste Regulation**

The General Assembly considered legislation related to fees for the disposal of solid waste and efforts to reduced waste tire stockpiles in the state.

**House Bill 10-1329** includes a number of provisions related to the Hazardous Substance Response Fund, the Solid Waste Management Fund, and the fees which support both the Solid Waste Management Program and the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), which is commonly referred to as the Superfund program.

The repeal date for the solid waste user fee is extended to July 1, 2017. The bill allows the State Board of Health to set the level of the fee in an amount sufficient to support the direct and indirect costs to the Departments of Public Health and Environment and Law associated with the CERCLA and Solid Waste Management programs.

Under current state law, several state departments administer waste tire reduction and recycling programs funded by a \$1.50 per tire fee. **House Bill 10-1018** consolidates all waste tire programs under the Department of Public Health and Environment and establishes new requirements for education, outreach, and fire planning and prevention.

The bill increases maximum reimbursements to processors and end users from \$50 to \$65 per ton of waste tires. In addition, the bill establishes new regulations governing waste tire haulers and waste tire facilities. The bill also creates a nine-member Waste Tire Advisory Committee to provide feedback and assessment of the Waste Tire Cleanup Program.

### **Air Quality**

House Bill 10-1042 enacted several changes to the Air Quality Control Program, which is overseen by the Department of Public Health and Environment. The bill requires the Air Quality Control Commission to report permit information on stationary industrial sources of pollution in its annual report to the public, rather than reviewing and approving all invoices for any permit which required five or more hours of staff time to process.

The bill changes the notification requirements for construction permits. Pursuant to the bill, entities with a construction permit must notify the department within 15 days of beginning construction activity, rather than 30 days prior to beginning construction activity. It also increases the penalty for open burning from \$100 to up to \$500 per day for the first violation. The penalty for a second violation is up to \$1,000 per day and the penalty for a third or subsequent violation is up to \$1,500 per day.

The Automobile Inspection and Readjustment Program (AIR program) is designed to reduce air pollutants through the regular inspection and repair of high polluting vehicles. Vehicles registered in the enhanced inspection area must meet established criteria for emissions of carbon monoxide, nitrogen oxides, and hydrocarbons. To ensure compliance with these standards, vehicles are required to undergo periodic emissions testing at the time their registration is renewed. Vehicles that fail the tests must be repaired and pass a retest before registration may be renewed.

Last year, the General Assembly adopted Senate Bill 09-003, which included most of Weld and Larimer counties in the enhanced inspection area of the AIR program, beginning January 1, 2010. **Senate Bill 10-095** would have repealed most of the provisions of Senate Bill 09-003, and moved Weld and Larimer counties into the basic inspection area, which does not require periodic emission testing for most vehicles. The bill was postponed indefinitely.

## **Tobacco Settlement and Tax Programs**

In Colorado, a variety of public health programs are funded through two tobacco-related funding sources: a tax on tobacco products implemented by Amendment 35, which was approved by voters in 2004, and the tobacco settlement agreement. The tobacco settlement agreement is a legal settlement under which states receive annual payments to compensate for the cost of caring for individuals with tobacco-related illnesses. During the 2010 legislative session, the General Assembly made adjustments to the programs funded by these tobacco moneys in response to the economic downturn.

**House Bill 10-1323** transfers \$2.6 million of tobacco-settlement moneys to the General Fund in FY 2009-10 and \$4.0 million in FY 2010-11.

When Amendment 35 was passed by voters, it contained a provision stating that the moneys generated by the new tax could be spent for purposes other than those outlined in the amendment if a state fiscal emergency was declared. **Senate Joint Resolution 10-010** declares a state fiscal

emergency for FY 2010-11 and specifies that General Assembly intends to use the Amendment 35 revenue for any health-related purpose and to fund the Children's Basic Health Plan and Medicaid program.

Pursuant to the declaration of a state fiscal emergency in Senate Joint Resolution 10-010, as well as a similar declaration that was passed last year, **House Bill 10-1320** and **House Bill 10-1321** allow Amendment 35 moneys that were to be used to expand health care programs, for grants to reduce health disparities, and to reimburse primary care providers who see a high number of uninsured and Medicaid patients to be used for any health-related purpose and to serve persons enrolled in both the Children's Basic Health Plan and Medicaid in FY 2009-10. **House Bill 10-1381** makes similar transfers totaling \$25.6 million for FY 2010-11. **House Bill 10-1378** allows \$28.3 million in tobacco tax money to be used replace General Fund moneys used to reimburse health care clinics and pay for Medicaid services in FY 2010-11.

#### Other

**Senate Bill 10-189** authorizes a county board of health or a district board of health to approve a program operated by a public health authority that allows individuals to exchange used syringes for unused syringes. Prior to approval of a syringe exchange program, the board must consult with the public health agency and interested stakeholders to consider the scope of the problem being addressed, concerns of law enforcement, and the parameters of the proposed program. The bill exempts an employee or volunteer of an approved clean syringe exchange program from drug paraphernalia laws, including a class 2 misdemeanor for the manufacture, sale, or delivery of drug paraphernalia, and a class 2 misdemeanor for the advertisement of drug paraphernalia.

**House Bill 10-1149** clarifies and updates several provisions concerning radiation control laws. Among other provisions, the bill:

- eliminates the specific requirements concerning the education and training of mammographers;
- specifies that the State Board of Health may charge fees for application processing and for radiation control services and the fees are to cover the direct and indirect costs of these services; and
- specifies that when a person violates the radiation control rules, the Department of Public Health and Environment may, with proper notice and after considering a variety of factors about the severity of the violation, assess an administrative penalty of up to \$15,000 per day.